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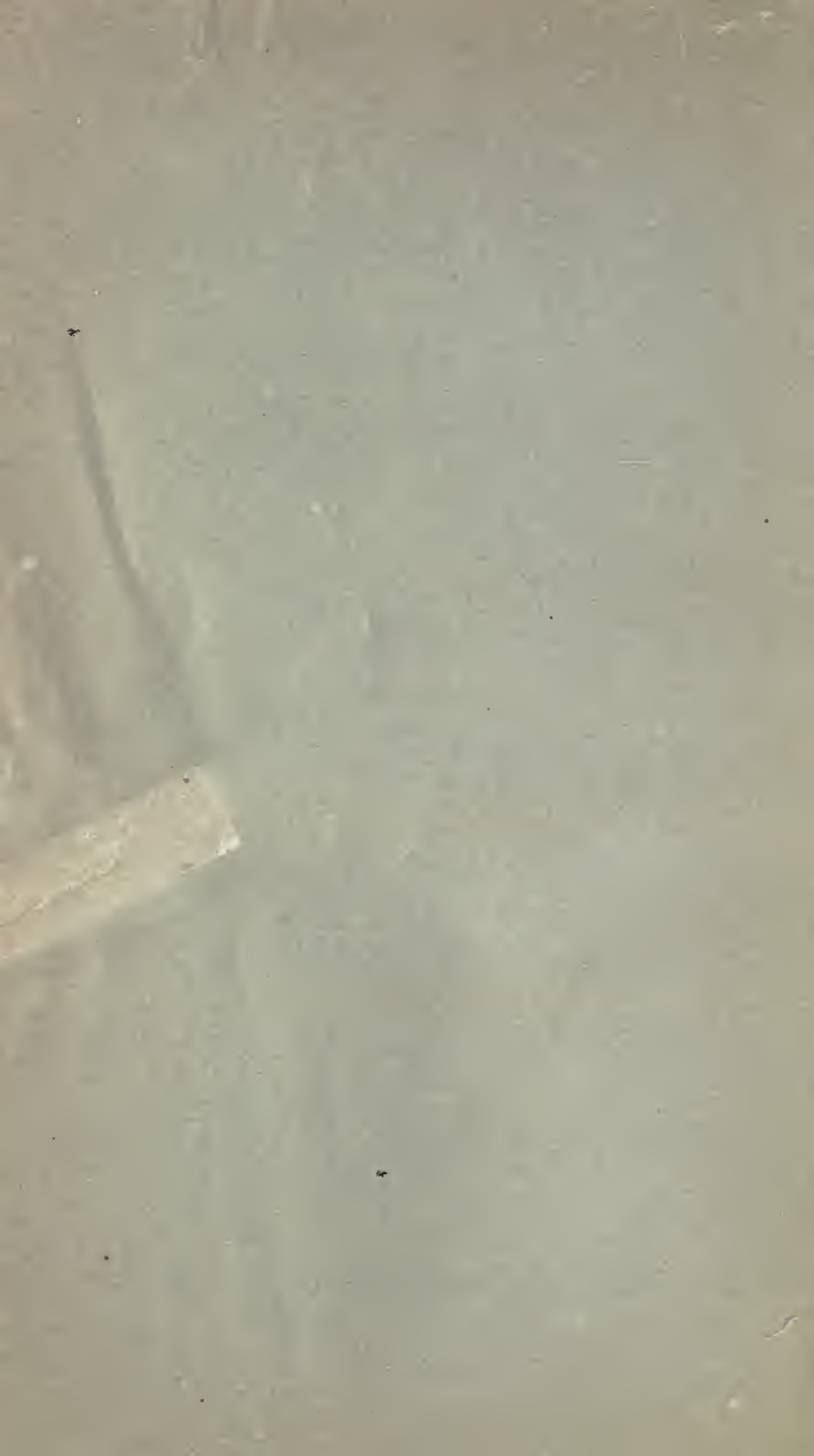
In the Court of Claims of the United States.

INDIAN DEPREDACTIONS.

JAMES W. HOSFORD AND CHARLES Gagnon, trading under the name of Hosford & Gagnon,	}	No. 3913.
<i>vs.</i> THE UNITED STATES AND THE Sioux and Cheyenne Indians.		

DEFENDANTS' REQUEST FOR FINDINGS OF FACT—OB-
JECTIONS TO FINDINGS OF FACT REQUESTED BY
CLAIMANTS—BRIEF AND ARGUMENT OF COUNSEL
FOR DEFENDANTS.

L. W. COLBY,
Assistant Attorney-General.



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DEFENDANTS' REQUEST FOR FINDINGS OF FACT, AND OBJECTIONS TO FINDINGS OF FACT REQUESTED BY CLAIMANTS.

I.

Counsel for defendants objects to the second, third, fourth, and fifth findings of fact requested by claimant.

II.

The defendants, considering the facts hereinafter set forth to be proven, and deeming them material to the due presentation of this case in the findings of fact, request the court to find the same as follows :

1. That claimants were not citizens of the United States at the time of the commission of the depredation charged in their petition.

2. That the evidence does not show that the Cheyenne and Sioux Indians committed the alleged depredation.

3. That the Cheyenne and Sioux Indians were not in amity with the United States in August, 1865, the time of the alleged depredation.

4. That the evidence is insufficient to establish the loss as alleged, and that there is no evidence of any loss of property (for which, in any event, defendants would be liable), to exceed \$6,401 in value.

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BRIEF AND ARGUMENT OF COUNSEL FOR DEFENDANTS.

STATEMENT OF CASE.

James W. Hosford and Charles Gagnon were partners in the business of hauling overland freight and selling merchandise west of the Missouri River in 1865. On the 15th of August, 1865, while en route to Salt Lake City with 13 wagonloads of merchandise, the Sioux and Cheyenne Indians took from claimants near Fort Laramie, Wyo., goods, merchandise, and cattle in value, as their petition states, \$20,150.

I.

CLAIMANTS NOT CITIZENS OF THE UNITED STATES.

An examination of the testimony of Mr. Gagnon, found on page 6, shows plainly that he was not a citizen of the United States at the time his evidence was taken in this case. The partnership of this claimant with James W. Hosford is clearly shown, but the citizenship of the latter can not be relied upon to make the claim of the partnership good under the act of March 3, 1891. This same question arises and is fully argued in defendant's brief in Indian depredation No. 3912, Hosford & Gagnon, to which the court is respectfully referred.

II.

EVIDENCE INSUFFICIENT TO CHARGE THE SIOUX AND
CHEYENNE INDIANS.

Of the seven witnesses in this case only one aside from claimants gives any testimony as to the Indians who committed the depredation. The substance of the evidence is as follows :

Mr. Vanlue :

They were reported to be the Sioux and Cheyenne Indians (p. 2, Int. 4).

You don't know of your own knowledge to what tribe, band, or nation of Indians those committing the depredation belonged, do you ?

No, sir (p. 3, Int. 25).

Mr. Gagnon :

Are you familiar enough with the different tribes of Indians to state positively and of your own knowledge who the Indians were or to what tribe they belonged ?

I don't think that I could tell. We were told by others that claimed to know at the time that they were Sioux and Cheyennes (p. 8).

Mr. Hosford :

What Indians were they ?

We supposed them to be the Sioux and Cheyenne, although we could not tell certain.

You were not familiar enough with the different tribes and nations to state exactly to which tribe these Indians belonged ?

No, sir (p. 10).

Upon such testimony as this the court would not be justified in entering judgment against any tribe or nation of Indians.

III.

INDIANS NOT IN AMITY WITH THE UNITED STATES.

It is submitted that the claimants should show that defendants, the Cheyenne and Sioux Indians, were in amity with the United States in August, 1865, the time of the depredation charged.

There is not only an entire absence of testimony on this point, but on the contrary strong evidence of a state of hostility and open war.

The records of the War Department, reports of Commissioner of Indian Affairs and Indian agents, for 1865,

all show conclusively that both the Cheyenne and Sioux Indians were on the war path in the spring and summer of 1865, and especially active in their campaign along the overland trail to Fort Laramie and west of said fort, where claimants met with their loss. A full record of this war and discussion of the question will be found in the brief of defendants, filed in Indian depredation case of A. C. Leighton, No. 816.

Under such a condition of hostilities as this record discloses, and with which the claimants' own testimony shows they were well acquainted, there could be no liability on the part of the United States or defendant Indians for the loss of property for which claimants ask judgment in this court.

IV.

AMOUNT AND VALUE OF PROPERTY NOT PROVEN AS ALLEGED.

Claimants show, by satisfactory evidence, the loss of property at prices named herein :

504 gallons (12 barrels) whisky, at \$4.....	\$2, 016
3,000 pounds side meat, at 25 cents.....	750
2,000 pounds ham, at 30 cents.....	600
3,000 pounds coffee, at 33 cents.....	990
2,000 pounds corn meal, at 1½ cents.....	35
200 pounds butter, at 50 cents.....	100
3,000 pounds sugar, at 20 cents.....	600
1,500 pounds of honey, at 50 cents.....	750
7 head of work cattle, at \$80.....	560
Total.....	6,401

The two items of \$4,500 for fancy groceries and \$5,500 for dry goods must be in any event rejected, as there is no evidence as to the amount of these goods or number and value of articles lost, only the bare statement of a loss of \$10,000 in goods. Such statements are too indefinite and uncertain to constitute evidence upon which this court could enter judgment for claimants.

As the evidence introduced clearly shows that claimants were not both citizens of the United States at the time of the depredation charged, and that the Indians charged with the depredation were at the time at war with the United States, the question of amount and value of property lost need not be considered by the court, but judgment entered dismissing claimants' suit for want of proper jurisdiction.

L. W. COLBY,
Assistant Attorney-General.
C. E. WHITE,
Assistant Attorney.

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